UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

WAD 00928 2302
12/21/99
4c

December 21, 1999

Reply To
Attn Of: WCM-126

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr Richard Padden, Member
Container Properties, L.L.C.
1216 140th court East
Sumner, WA 98390

Re: **NOTICE OF VIOLATION**
Rhone-Poulenc Inc. Marginal Way Facility
WAD 00928 2302

FILE COPY

Dear Mr. Padden:

This letter is in response to Mr. Donald J. Verfurth's letter of November 19, 1999, regarding the November 3, 1999 Notice of Violation (NOV). The NOV informed Container Properties L.L.C. of violations of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6901 et seq., identified during an inspection conducted by the U.S. Environmental Protection Agency (EPA) at the above-referenced facility on October 8, 1999. The purpose of the inspection was to ensure that investigation derived waste (IDW) generated by Container Properties L.L.C. from the voluntary interim measure (IM) activities were managed in accordance with applicable regulations promulgated pursuant to RCRA.

Mr. Verfurth's letter indicates that two open-topped containers which were in the vicinity of the voluntary IM activities were not labeled because they "were not being used for the accumulation of hazardous waste." This statement is contradictory to what our inspector observed and was told. At the time of the inspection our inspector observed two large open-topped containers in the vicinity of the voluntary IM activities. Our inspector observed that one of the two large open-topped containers had a hose entering it from the top. Our inspector observed that this container was approximately one third full of liquid and separated (settled) solids. Our inspector asked Mr. Doesburg of Horizontal Remediation Services, Inc. what was contained in the open-topped container with the hose entering into it. Mr. Doesburg answered that the open-topped container was receiving a slurry mixture of drill cuttings, well development fluids and purge water from the horizontal wells which were at the time being developed. Mr. Doesburg explained that during the development process a hose, or PVC pipe, is connected to one end of the well. Water is introduced into to the hose or pipe and sucked or vacuumed out the other end of the well. Mr. Doesburg explained this particular type of drilling technique mixes all of the drilling wastes and soil cuttings together. Our inspector asked Mr. Doesburg what was in

the other open-topped container that did not have a hose entering into it. He informed the inspector it was empty and that it was there in the event that they needed more capacity for the slurry mixture.

IDW generated from this voluntary IM include: soil cuttings and drilling mud, purge water removed from wells during their development, water, solvents, or other fluids used to decontaminate field equipment and personal protective equipment. Any type of IDW that contains listed hazardous waste is considered to be a RCRA hazardous waste (See EPA/540/G-91/009, Management of Investigation-Derived Wastes During Site Inspections). In the case of this facility, the IDW generated from this voluntary IM is designated as hazardous for EPA Hazardous Waste Number: U220, Toluene and may also be characteristically hazardous, the determination of which is the responsibility of the generator.

Mr. Verfurth's statements that the large open-topped containers "were not being used for the accumulation of hazardous waste" also seemingly contradicts a telephone conversation between Kim Ogle and Pete Wold on December 7, 1999. This telephone conversation was documented in a letter dated December 16, 1999 (attached). In this conversation, Mr. Wold informed Ms. Ogle that the large 4000 gallon tank used to collect well development water and purge water, was a hazardous waste and is designated to be EPA Hazardous Waste Number: U220 (note: EPA believes that this 4000 gallon tank is the same container observed by our inspector and is one of the two open-topped containers mentioned in Mr. Verfurth's letter). In addition, during the December 7, 1999 telephone conversation, Mr. Wold stated that all of the wastes generated during the voluntary IM, including the large open-topped container which held approximately 4000 gallons of liquid, were designated as hazardous waste (EPA Hazardous Waste Number U220).

The open-topped container which had the hose entering into it that was accumulating a slurry of U-listed, hazardous IDW was in fact a satellite accumulation area. At the time of this inspection, and as attested to in Mr. Verfurth's letter, this container was not labeled as required despite the fact that the container held U-listed hazardous waste. In addition, Mr. Peter Wold, an authorized representative of Container Properties, L.L.C., confirmed to EPA's inspector that the material in this container was hazardous waste.

The declarations from Mr. Carey and Mr. Doesburg that Mr. Verfurth included in his November 19, 1999 letter do not appear to refer to the large open-topped container that was the subject of EPA's November 3, 1999 NOV and are therefore not relevant to the cited violations. Even if the declarations are referring to the same container however, EPA believes the information declared is inconsistent with the observations of and other information received by EPA's inspector and reasserts its statements supporting the violations. For these reasons, EPA hereby re-alleges the violations set forth in the November 3, 1999, NOV and asserts that Mr. Verfurth's November 19, 1999 response to the November 3, 1999 NOV was not responsive.

The following violations remain outstanding:

1) The regulation at 40 C.F.R. § 262.34(a)(2) allows a generator to accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. At the time of the inspection, the large open- topped container did not have a date upon it. Consequently, this constitutes a violation of 40 C.F.R § 262.34(a)(2).

2) The regulation at 40 C.F.R. § 262.34(a)(3) allows a generator to accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that while being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste". At the time of the inspection, the large, open-topped container with the hose entering into it did not have the words, "Hazardous Waste" marked on it. Consequently, this constitutes a violation of 40 C.F.R. § 262.34(a)(3).

Required Action:

The above violations may subject Container Properties, L.L.C. to enforcement action under Section 3008 of RCRA, 42 U.S.C. § 6928, including the assessment of penalties. Within seven (7) days of receipt of this NOV, EPA requests that Container Properties, L.L.C. respond to the above violations and indicate what measures it will take to prevent future noncompliance. EPA requests that Container Properties, L.L.C., submit copies of the hazardous waste manifest(s) and any analysis conducted on the IDW in conjunction with the waste's disposal.

EPA Reservation of Rights:

Notwithstanding this NOV or Container Properties LLC.'s response, EPA reserves the right to take any action pursuant to RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), or any other applicable legal authority, including without limitation, the right to seek injunctive relief, implementation of response actions or corrective measures, cost recovery, monetary penalties, and punitive damages. Container Properties L.L.C.'s response to this NOV does not constitute compliance with RCRA.

Nothing in this NOV or your response shall affect the Facility's duties, obligations, or responsibilities with respect to the Facility under local, state or federal regulation.

Thank you for your prompt attention to this important matter. In response to Mr. Verfurth's request that EPA rescind the November 3, 1999 NOV, EPA does not rescind NOVs unless information is provided which demonstrates that the facts surrounding the allegations are incorrect. Based on Mr. Verfurth's letter no new information was provided to compel EPA to

reevaluate the violations. Please direct any questions you may have regarding this NOV to Kim Ogle at (206) 553-0955. Also, for future correspondence, the correct spelling of my name is Jamie Sikorski.

Sincerely,

Jamie Sikorski, Manager
RCRA Compliance Unit

Enclosure

cc B. Maeng, Ecology, NWRO
D. Verfurth, Carney, Badley, Smith & Spellman
C. Blumenfeld, Perkins Coie
M. Smith, AGI Technologies
P. Wold, RCI Environmental Inc.

bcc: J. MacDonald, ORC
K. Ogle, OWCM RCU
R. Fuentes, OEA
M. Bailey, OEA
B. Duncan, OEA

CONCURRENCES:

INITIALS ☞	rgb		KO	JM	POLICY FILE		RCRIS INFO SUBMITTED	
NAME ☞	BROWN	PEER REVIEW	OGLE	MACDONALD	YES	NO	YES	NO
DATE ☞	12-20-99		12/20	12/21/99			ATTACHED	

same

not applicable

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

December 16, 1999

Reply To
Attn Of: WCM-126

CERTIFIED MAIL– RETURN RECEIPT REQUESTED

Mr. Peter Wold,
RCI Environmental, Inc.
P.O. Box 1668
Sumner, WA 98390

Re: Rhone-Poulenc Inc. Marginal Way Facility
WAD 00928 2302

Dear Mr. Wold:

This letter serves to document the telephone conversation we had on Tuesday, December 7, 1999, regarding the management, treatment, and designation of wastes that were generated as a result of the voluntary interim measures (IM) taken at the above referenced facility.

During the call you indicated the following containers of waste were generated: six (6) drums, consisting of development water and purge water which have a concentration of 54 ppm of toluene; one drum of decontamination water, and a large tank (approximately 4000 gallons) of water consisting of well development water and purge water which has a concentration of 15 ppm toluene. Your question was whether or not the six drums could be combined with the one drum of decontamination water .

Given that as the generator of the waste you must determine whether the waste is hazardous, I asked how the wastes would be designated. In response to my question you stated that all of the wastes and media would be classified as EPA hazardous waste number: U220. I informed you that as long as all the waste and media was U220 (regardless of the concentrations) combining the containers would not be prohibited. You told me that analysis was conducted to determine if the land disposal restriction (LDR) treatment standards were met. You stated that the large tank was undergoing biological treatment in the hopes that the contents would meet the LDR treatment standards.

Next, you asked whether the "derived from rule" (40 C.F.R. § 261.3(c)(2)(i)) applies to the 4000 gallons of treated liquid in the event that laboratory analysis indicated no detection of

toluene. The derived from rule states, " . . . any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste." Thus, the derived from rule would in fact be applicable here if the slurried mixture is a solid waste. Similarly, the contained-in policy would be applicable if the slurried mixture is a U-listed contaminated media. Application of either the derived-from rule or the contained-in policy would mean that the 4000 gallons of U-listed waste would still be hazardous waste even after biological treatment and would be required to be disposed of in accordance with all applicable rules governing hazardous waste disposal.

Finally, I advised you that any treatment of hazardous waste by a generator, in this case biological treatment of U-listed hazardous waste and media needs to comply with the waste analysis plan (WAP) requirements found at 40 C.F.R. § 268.7(a)(4). This requirement specifies that a WAP must be filed with the EPA Regional Administrator or State authorized to implement Part 268 requirements a minimum of 30 days prior to the treatment activity, with delivery verified. EPA is not aware of such a WAP being filed as required regarding the treatment of the U-listed waste in the large tank. Thus, if such a WAP has not been filed, you may be in violation of 40 C.F.R. § 268.7(a)(4).

Please call me at (206) 553-0955 if you have any further questions.

Sincerely,

Kimberly A. Ogle

Kimberly Ogle,
RCRA Compliance Officer

cc: Mackey Smith, AGI, Technologies
Charles Blumenfeld, Esq.
B. Maeng, Ecology, NWRO
D. Verfurth, Carney Badley Smith and Spellman
Mr. Rich Padden, –John this is the correct address for him
Container Properties, L.L.C.
1216 140th Court East
Sumner, WA 98390